

ORIGINAL

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

| | | | |
|-----------------------------------|---|------------------------|-----------------|
| In re: | § | Chapter 11 | |
| | § | | |
| Cafeteria Operators, L.P. | § | Case No. | 03-30179-HDH-11 |
| Furr's Restaurant Group, Inc. | § | Case No. | 03-30190-HDH-11 |
| Cavalcade Foods, Inc. | § | Case No. | 03-30194-HDH-11 |
| Furr's/Bishop's Cafeterias, L.P., | § | Case No. | 03-30185-HDH-11 |
| | § | | |
| Debtors. | § | (Jointly Administered) | |

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN SUPPORT OF ORDER CONFIRMING AMENDED JOINT
PLAN OF REORGANIZATION FOR THE DEBTORS**

The Court has considered the Amended and Restated Joint Plan of Reorganization for the Debtors, dated July 25, 2003, as amended by that Supplemental Modification to Amended Plan of Reorganization for the Debtors, filed September 10, 2003 and certain oral modifications made during the Confirmation Hearing commencing September 11, 2003 (the "Modifications" and collectively, as amended, the "Plan")¹ filed by (i) the debtors and debtors-in-possession in these cases, Furr's Restaurant Group, Inc. ("FRG"), Cafeteria Operators, L.P. ("COLP"), Furr's/Bishop's Cafeterias, L.P. ("Furr's/Bishop's") and Cavalcade Foods, Inc. ("Cavalcade," and collectively, the "Debtors"; (ii) Fleet National Bank ("Fleet"), as Administrative Agent on behalf of itself and Washington Mutual Bank, The Provident Bank, ORIX Financial Services, Inc., Textron Financial Corporation and Heller Financial Leasing, Inc. (collectively, the "Bank Group"; and (iii) the Official Committee of Unsecured Creditors (the "Committee," and

¹ Capitalized terms not defined in these Findings and Conclusions shall have the meanings ascribed to them in the Plan or the Asset Sale and Purchase Agreement, as amended (the "BP Purchase Agreement"), by and between COLP and Buffet Partners, L.P. ("Buffet Partners"), successor-in-interest to CIC-Buffer Partners, L.P. The "Purchaser" shall be defined as Buffet Partners, inclusive of its successors, assigns, or transferees. If a capitalized term is not defined in either these Findings and Conclusions, the Plan or the BP Purchase Agreement, then it shall have the meaning prescribed in the Bankruptcy Code or Bankruptcy Rules, whichever is applicable.

collectively, the “Proponents”). Having considered the Plan, the objections to confirmation filed, the evidence presented, proffers of testimony and arguments and representations of counsel, the Bankruptcy Court makes the following findings of fact and conclusions of law pursuant to Fed. R. Bankr. 7052.²

I. Jurisdiction, Venue and Notice

1. The Bankruptcy Court has jurisdiction over these Chapter 11 Cases and the subject matter of the Confirmation Hearing pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2) and the Bankruptcy Court has jurisdiction to enter an order with respect thereto. Venue of these Chapter 11 Cases is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Notice of Sale Procedures, the Auction, the sale of the Purchased Assets, the assumption by the Debtors and assignment to Buffet Partners of the Assumed Contracts (as defined below) and Notice of Entry of Order (i) Approving Disclosure Statement; (ii) Establishing Record Date; (iii) Establishing Procedures and Deadline for Voting on the Amended Joint Plan of Reorganization for the Debtors; (iv) Setting Bar Dates for Workers Compensation Claims and Administrative Expense Claims; (v) Scheduling Hearing for Confirmation of the Amended Joint Plan of Reorganization for the Debtors; and (vi) Establishing Procedures for Objecting to Confirmation of the Joint Plan of Reorganization for the Debtors (the “Confirmation Hearing Notice”) have been given by the Debtors to all parties in interest and creditors in these cases, including all persons and entities having a claim, lien or interest in or relating to the Purchased Assets, and all parties to the Assumed Contracts in accordance with

² Where appropriate, findings of fact shall also be considered conclusions of law, and conclusions of law shall also be considered findings of fact. The Bankruptcy Court reserves the right to make further findings of fact and conclusions of law.

Bankruptcy Rule 6004(c), the order of the Bankruptcy Court and as otherwise described in the Notice of Sale Procedures and the Confirmation Hearing Notice.

3. Notice of the Confirmation Hearing has also been given to ADP Investor Services for distribution to various brokers and agents for the Debtors' non-consenting shareholders in accordance with this Court's Order Granting Expedited Motion to Shorten Notice of Non-Voting Status Pursuant to Bankruptcy Rule 9006(c)(1), dated August 14, 2003 (the "Non-Voting Status Notice").

4. The Plan, Disclosure Statement, Ballots, and all other materials required to be transmitted to holders of Claims and Equity Interests were transmitted in accordance with applicable law including, without limitation, section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 3017, 6004, 6006 and 9019 and the orders of the Bankruptcy Court.

5. Notice of the Confirmation Hearing, the sale of the Purchased Assets, and the assumption by the Debtors and assignment to Buffet Partners of the Assumed Contracts (as defined below) was proper, timely, adequate and sufficient notice to all creditors and parties in interest, and made in accordance with all applicable law, including without limitation section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 3017, 6004, 6006 and 9019 and the orders of the Bankruptcy Court.

6. Holders of Claims and Equity Interests and all other parties in interest received adequate and reasonable notice and an opportunity to object and to be heard regarding the relief granted herein (including the sale of the Purchased Assets free and clear of the Encumbrances (as defined below) and the assumption and assignment of the Assumed Contracts and were accorded due process in the adjudication of the issues presented by confirmation of the Plan.

7. No other or further notice of the Confirmation Hearing, the sale of the Purchased Assets and the assumption by the Debtors and assignment to Buffet Partners of the Assumed Contracts is required.

II. Filing and Service of the Plan, Disclosure Statement and Solicitation Packages

8. On January 3, 2003 (the "Petition Date"), each of the Debtors filed individual, voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").

9. On July 17, 2003, the Proponents filed their Disclosure Statement Regarding Amended Joint Plan of Reorganization for the Debtors Dated July 17, 2003 in the Chapter 11 Cases. On July 25, 2003 the Proponents amended the previously filed Disclosure Statement with the Disclosure Statement Regarding Amended Joint Plan of Reorganization for the Debtors, Dated July 25, 2003 (the "Disclosure Statement").

10. On July 25, 2003, after notice and a hearing, the Bankruptcy Court entered its Order (i) Approving the Disclosure Statement Regarding Amended Joint Plan of Reorganization for the Debtors; (ii) Fixing a Record Date; (iii) Approving Solicitation Packages and Procedures for Distribution thereof; (iv) Approving Forms of Ballots and Establishing Procedures for Voting on the Amended Joint Plan of Reorganization for the Debtors; (v) Setting Bar Dates for Workers Compensation Claims and Administrative Expense Claims and (vi) Scheduling a Hearing and Establishing Notice and Objection Procedures with Respect to Confirmation of Amended Joint Plan of Reorganization for the Debtors (the "Disclosure Statement Order").

11. The Disclosure Statement Order (a) approved the adequacy of the information contained in the Disclosure Statement; (b) required the Debtors to transmit the Plan, the Disclosure Statement and the Solicitation Packages (as that term is described in the Disclosure

Statement Approval Order) to the United States Trustee and all creditors and interested parties entitled to vote on the Plan on or before August 5, 2003; (iii) established September 2, 2003 at 5:00 p.m. central daylight time as the deadline for submitting Ballots on the Plan (the “Voting Deadline”); (iv) established September 2, 2003 at 5:00 p.m. central daylight time as the deadline for filing and serving objections to confirmation of the Plan (the “Objection Deadline”); and (v) scheduled September 11, 2003 at 1:30 p.m. central daylight time as the hearing on confirmation of the Plan.

12. On September 4, 2003, the Debtors filed Affidavits evidencing service of the Plan, Disclosure Statement and Solicitation Packages to holders of Claims and Equity Interests and the parties on the Official Master Service List dated July 25, 2003. The evidence demonstrates that the Plan, Disclosure Statement and Solicitation Packages were mailed on or before August 5, 2003, to (a) all creditors entitled to vote on the Plan, (b) all counterparties to Assumed Contracts, (c) all parties identified on the Official Master Service List dated July 25, 2003 and (d) certain other interested parties therein.

III. The Sale Process and BP Purchase Agreement

13. The Debtors retained Murphy Noell Capital, LLC (“Murphy Noell”) in connection with the anticipated sale of the operating assets of COLP and the evaluation of the potential benefits of the sale as compared to other alternative transactions, including a stand alone plan of reorganization.

14. The Debtors, in consultation with Murphy Noell, determined in their sound business judgment that a sale of substantially all of the operating assets of COLP to a third party, assuming a minimum purchase price and other conditions, would be in the best interests of the Debtors' creditors and produce an outcome superior to that of a stand alone plan.

15. The Debtors' operating assets are substantially more valuable if they are sold while their businesses are still operating, rather than liquidated following a shut down of operations.

16. Both prior to and since the Petition Date, the Debtors have made efforts to identify a purchaser for COLP's operating assets. Pre-petition efforts did not result in the receipt of any formal offers.

17. The marketing process conducted by Murphy Noell yielded preliminary proposals that resulted in several serious expressions of interest.

18. Ultimately, the Debtors (in consultation with the Murphy Noell, the Committee and the Bank Group) chose to pursue a sale of COLP's operating assets to Buffet Partners, resulting in the execution of the BP Purchase Agreement on July 2, 2003. The negotiations resulting in the BP Purchase Agreement were extensive, and focused on contingencies, closing and purchase price issues.

19. On July 7, 2003, the Bankruptcy Court entered its Order (i) Setting Bid Procedures; (ii) Approving Form and Manner of Sale Notices; and (iii) Approving Break-Up Fees (the "Auction Procedures Order") whereby Buffet Partners was approved as the "stalking horse" bidder for the operating assets of COLP, and certain bid and auction procedures were established.

20. On August 1, 2003, the Notice of Sale Procedures was distributed in conformity with the Auction Procedures Order. A declaration reflecting such service was filed with the Court on September 4, 2003.

21. Pursuant to the Auction Procedures Order, the Debtors received inquiries from various parties regarding the contemplated sale and provided due diligence materials to those parties that would enable them to evaluate the Debtors' assets and submit a competing offer.

22. The Debtors, the Bank Group, the Committee and Buffet Partners implemented the Auction Procedures in good faith and in conformity with the Auction Procedures Order and the Notice of Sales Procedure.

23. No Qualifying Bids, as that term is defined in the Auction Procedures Order, resulted from the Auction Procedures. Therefore, the BP Purchase Agreement was selected as the successful bid.

24. The BP Purchase Agreement generally provides that Buffet Partners shall purchase the Purchased Assets, assume the Assumed Liabilities, and assume the leases and the executory contracts listed on Schedule 1.1(n) of the BP Purchase Agreement, as such schedule may be amended to the extent consistent with Schedule 16(a) to the Plan,³ and any other executory contract or unexpired lease assumed and assigned by Court Order (the "Assumed Contracts"). The aggregate consideration to be paid by Buffet Partners under the BP Purchase Agreement is approximately \$29 million, consisting of \$25.75 million in cash and the assumption of approximately \$3 million of the Debtors' liabilities (subject to adjustment based on the Debtors' working capital and prorated ad valorem taxes). The BP Purchase Agreement contains customary representations and warranties made by the parties. As a result of good faith and arm's length negotiations, various provisions of the BP Purchase Agreement were modified prior to the Confirmation Hearing by that certain Waiver Agreement, dated September 11, 2003

³ The Purchased Assets, however, do not include any Excluded Assets, as defined in Schedule 11.4 to the Plan. The Excluded Assets, as defined in Schedule 11.4 to the Plan, shall remain property of the Debtors' estates and shall vest in the Reorganized Debtor.

executed by the Debtors, the Committee, the Bank Group, and Buffet Partners, and as read into the record of the Confirmation Hearing, to the following effect:

- (i) The Purchase Price referenced in Section 2.1 of the Purchase Agreement is reduced to \$25,750,000.00.⁴
- (ii) The reference to payment of \$24,500,000.00 in cash in Section 2.2(a)(i) of the Purchase Agreement is increased to \$25,750,000.00.
- (iii) Section 2.2(b), the last sentence of Section 2.2(d), Section 7.3(h) and Section 8.3(f) referencing certain Promissory Notes are deleted in their entirety.
- (iv) The Supplement #1 to the Asset Sale and Purchase Agreement dated July 2, 2003 between COLP and Purchaser is terminated.

25. The Waiver Agreement and the other amendments set forth above, be and hereby are **APPROVED** as modifications to the BP Purchase Agreement.

26. The BP Purchase Agreement was negotiated, proposed and entered into by the Debtors, the Committee, the Bank Group and Buffet Partners without collusion, in good faith, and as a result of arm's length negotiations. At the Certification Hearing, the Bankruptcy Court approved the Waiver Agreement and the other agreements read into the record by such parties.

27. The Proponents, the members at the Bank Group, Buffet Partners and each of their respective officers, directors, partners, employees, attorneys, agents, and representatives (collectively, the "Plan Parties") have acted in good faith and within their respective rights and authorities in negotiating and presenting the terms of the Plan, as modified, to this Court for approval, and in all other negotiations and matters relating to or arising from negotiations for the sale of the Purchased Assets, pursuant to Option A of the Plan, or for the sale of the stock of, or claims of, the Debtors pursuant to Option B of the Plan. Negotiation, execution and/or

⁴ This modification of the purchase price resulted in increasing the overall recovery to holders of Class 5 Claims, but reduced the aggregate consideration for the Purchased Assets, with such reduction being consented to by the Bank Group.

consummation of the Plan and any and all related documents and/or transactions shall not give rise to any liability, claim or cause of action against the Plan Parties, individually or collectively.

28. The Plan Proponents elected to proceed under Option A of the Plan. The Plan Parties have not engaged in any conduct that would cause the application of 11 U.S.C. § 363(n) to the sale transaction, including having the BP Purchase Agreement avoided.

29. Buffet Partners has at all times acted in good faith and qualifies as a good faith purchaser pursuant to 11 U.S.C. § 363(m), and is therefore entitled to all of the protections afforded under that statute. Buffet Partners will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transaction under the BP Purchase Agreement, including the assumption and assignment of the Assumed Contracts, unless the Confirmation Order (as defined below) has been stayed pending appeal.

30. The consideration provided under the BP Purchase Agreement (a) is fair and reasonable, (b) is the highest and best offer for the Debtors' property and assets, (c) shall provide a greater recovery for the holders of Claims than would be provided by any other practical available alternative and (d) constitutes reasonably equivalent value and fair consideration under applicable federal and state law.

31. The transfer of the Purchased Assets and Assumed Contracts to Buffet Partners shall be a legal, valid and effective transfer, and shall vest Buffet Partners with good and indefeasible title in and to the Purchased Assets and Assumed Contracts free and clear of all liens, claims, encumbrances and security interests of any kind or nature (collectively, "Encumbrances") (except the Assumed Liabilities, as defined in the BP Purchase Agreement), including those Encumbrances that purport to give to any party in interest the right to require its consent or that purport to give such party a right or option to effect any forfeiture, modification,

right of first refusal, or termination of the Debtors' or Buffet Partners' interest in the Purchased Assets and Assumed Contracts, or any similar rights.

32. The Debtors may sell their interest in the Purchased Assets free and clear of all Encumbrances because one or more of the standards contained in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. The holders of Encumbrances have consented to the sale transaction described in the BP Purchase Agreement either because they explicitly voted to accept the Plan or did not object, or withdrew their objection, to confirmation of the Plan, in accordance with 11 U.S.C. § 363(f)(2).

33. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assumed Contracts to Buffet Partners in connection with the consummation of the Sale

34. The Debtors have demonstrated that assumption and assignment of the Assumed Contracts is in the best interest of the Debtors' estates and their creditors.

35. The Assumed Contracts being assigned to, and the Assumed Liabilities being assumed by, Buffet Partners are an integral part of the sale transaction described in the BP Purchase Agreement, and, accordingly, such assumption and assignment of the Assumed Contracts and Assumed Liabilities are reasonable, enhance the value of the Debtors' estates and do not constitute unfair discrimination.

36. The Debtors have demonstrated that there are no monetary defaults under any of the Assumed Contracts and no Cure Payment is required for the assumption and assignment of the Assumed Contracts and Purchased Assets to Buffet Partners, other than amounts indicated on Schedule 16(a) of the Plan, other orders entered by the Court approving the Debtors' assumption and assignment of specific executory contracts and unexpired leases, and any amounts to the

extent ordered by the Court in relation to the assumption of unexpired leases of real property with Aztex, Lynx, and/or Newkirk Sablemart.

37. Buffet Partners has provided adequate assurance of its future performance of and under the Assumed Contracts within the meaning of 11 U.S.C. §§ 365(b)(1)(C) and 365(b)(3).

IV. Findings of Fact and Conclusions of Law Concerning the Plan

38. The Proponents have elected to proceed under Option A of the Plan.

A. Objections to Confirmation of the Plan

39. Objections to confirmation were filed by:

- a. Missouri Department of Revenue, which objection has been withdrawn;
- b. Irving Independent School District, which objections have been withdrawn;
- c. Pension Benefit Guaranty Corporation, which objections have been withdrawn;
- d. United States Securities and Exchange Commission, which objections have been withdrawn;
- e. United States Department of Agriculture, Food Safety & Inspection Service, which objections have been withdrawn;
- f. General Electric Capital Corporation, which objections have been withdrawn;
- g. Weingarten Realty Investors, which objections have been withdrawn;
- h. Lubbock Central Appraisal District, Midland County Tax Office, Hale County Appraisal District, Potter County Tax Office, Richardson Independent School District, City of Fort Worth, and Fort Worth Independent School District, which objections have been withdrawn;
- i. County of Denton, County of Hays, Midland Central Appraisal District, and County of Taylor, which objections have been withdrawn;
- j. Brownsville Independent School District, Cameron Independent School District, Dallas County, Ector County, City of El Paso, Gray County, Grayson County, Harris County, Hopkins County, City of Houston, Lamar County Appraisal District, City of McAllen, Nueces County, City of Richardson, City of San Marcos, San Marcos County Independent School

- HMA*
- m. Bank One Trust Company, N.A., as Assignee pursuant to those certain Collateral Assignments of Sublease dated as of March 26, 2003;
 - n. Bank One Trust Company, N.A., as attorney-in-fact on behalf of Lynx Associates, L.P. in its capacity as lessor with respect to certain Furr's leases; and
District, City of Sulphur Springs, Sulphur Springs Independent School District, Tarrant County, and Victoria County, which objections have been withdrawn;
 - k. Bank One Trust Company, N.A., as Trustee under the Aztex Pooling Agreement;
 - l. Bank One Trust Company, N.A., as Trustee under the Lynx Trust Agreement; ~~and~~
 - o. POB Apollo Santa Fe, LP, which objections have been withdrawn.

40. At the Confirmation Hearing there were no remaining objections to confirmation of the Plan.

B. Modifications⁵

41. The modifications of the Plan set forth in the Supplemental Modification to Amended Joint Plan of Reorganization for the Debtors filed September 10, 2003, as made orally before the Court at the Confirmation Hearing, and as set forth in the Waiver Agreement do not materially or adversely affect or change the treatment of any Claim against or Equity Interest in the Debtors, or to the extent that the Modifications materially or adversely affect or change the treatment of any Claim against or Equity Interests in the Debtors, such Claim or Equity Interest holder has accepted in writing the Modification. Accordingly, pursuant to 11 U.S.C. § 1127(b) and Fed. R. Bankr. P. 3019, the Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of acceptances or rejections of the Plan as filed with the Court.

⁵ At the Confirmation Hearing, the Proponents withdrew their Motion To Modify Plan to Address Bank One Trustee Issues, and any changes proposed by such modification are not incorporated as part of the Plan.

C. Impairment of Claims under the Plan

42. Claims in Class 4 (Allowed Priority Non-Tax Claims) are unimpaired pursuant to 11 U.S.C. § 1124. All other Claims and Equity Interests are impaired pursuant to section 1124 of the Bankruptcy Code.

D. Classification of Claims

43. The Classes of Claims against and Equity Interests in the Debtors are designated as follows under the Plan:

| | |
|---------|--|
| Class 1 | Allowed Secured Tax Claims |
| Class 2 | Allowed Secured Bank Group Claims |
| Class 3 | Allowed Other Secured Claims |
| Class 4 | Allowed Priority Non-Tax Claims |
| Class 5 | Allowed General Unsecured Claims |
| Class 6 | Subordinated Claims Penalty Claims and Disallowed Claims |
| Class 7 | Equity Interests |

44. The classification scheme applies separately to each particular Debtor, and is in compliance with section 1123(a)(1), (2) and (3) of the Bankruptcy Code. Under Option A of the Plan Classes 1 and 4 are unimpaired, and therefore, are deemed by law to have accepted the Plan. Under Option A, Classes 2, 3, 5, 6, and 7 are impaired. Holders of Class 6 claims and Class 7 interests shall receive no distribution under the Plan on account of such Claims or Equity Interests. Therefore, Classes 6 and 7 are deemed to reject the Plan

45. The classification of Claims and Equity Interests found in Article 6 of the Plan is reasonable and necessary, has a rational, justifiable and good faith basis, and places Claims and Equity Interests in a particular Class where such Claims or Equity Interests are substantially similar to other Claims or Equity Interests of such Class.

E. Voting Tabulation

46. Ballots were transmitted to the holders of Claims in Classes 1, 2, 3 and 5 in accordance with the Disclosure Statement Order. Such solicitation was in good faith and in a manner consistent with the Bankruptcy Code and orders of the Bankruptcy Court.

47. On September 11, 2003, the Debtors presented a Certification of Lori B. Lowderman, on behalf of the Balloting Agent, summarizing all votes timely received concerning the Plan, which such summary was subsequently modified on the record at the Confirmation Hearing (with the modifications, the “Ballot Tabulation”), and certifying that the Balloting Agent received the requisite acceptances both in number and amount for confirmation of the Plan as required under section 1126 of the Bankruptcy Code. As evidenced by the Ballot Tabulation and based upon the record before the Bankruptcy Court, the solicitation and tabulation of acceptances and rejections of the Plan was accomplished in a proper, fair and lawful manner in accordance with the Disclosure Statement Order and all applicable provisions of the Bankruptcy Code and all applicable sections of the Bankruptcy Rules.

48. As disclosed in the Ballot Tabulation, all classes entitled to vote (Classes 2, 3 and 5) voted to accept the Plan. Accordingly, the Plan has been duly accepted by all holders of Claims whose acceptance is required in accordance with the provisions of section 1126(b) of the Bankruptcy Code.

F. Confirmation Requirements under the Bankruptcy Code

(i) 11 U.S.C. § 1123(a)(4): No Discrimination

49. Article 6 of the Plan provides for all holders of Claims against and Equity Interests within a particular class to receive identical treatment under the Plan on account of such Claims and Equity Interests unless the holder of such Claim or Interest has expressly consented

to less favorable treatment. Therefore, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

(ii) 11 U.S.C. § 1123(a)(5): Implementation of the Plan

50. The Plan provides adequate means for implementation of the Plan, including: (a) sale of substantially all of the operating assets of the Debtors; (b) assumption and assignment of certain Leases to the Purchaser, (c) the vesting of assets in COLP Creditors' Trust for the benefit of the Class 5 Allowed General Unsecured Creditors; (d) the cancellation of existing Equity Interests; (e) the appointment of William Kaye as Creditor Trustee for the purpose of performing the duties of Creditor Trustee under the COLP Creditors' Trust, (f) the appointment of William Snyder as Corporate Responsible Officer and as a representative of the Debtors' estates.

51. The Plan and the Trust Agreement also specify the procedures by which distributions shall be made to holders of Allowed Claims in Classes 1, 2, 3, 4 and 5. Accordingly, the Plan provides adequate, proper and legal means for its implementation, thereby satisfying the requirements of section 1123(a)(5) of the Bankruptcy Code.

(iii) 11 U.S.C. § 1123(a)(6): Equity Securities

52. No equity securities are being issued pursuant to the Plan or as part of the sale of the Debtors' assets.

(iv) 11 U.S.C. § 1123(a)(7): Selection of Directors and Officers

53. The Plan provides that William Snyder shall be appointed Corporate Responsible Officer with the authority and power of the Board of Directors, however after the closing of the sale of the Purchased Assets to the Purchaser, the conveyance of any Excluded Assets and performance of other duties specified in the Plan, the CRO shall resign and shall not be replaced. Therefore, the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

(v) 11 U.S.C. § 1123(b)(1): Impairment or Unimpairment of Claims

54. The Plan impairs or leaves unimpaired each class of Claims against or Equity Interests in the Debtors, and therefore satisfies the requirements of section 1123(b)(1) of the Bankruptcy Code.

(vi) **11 U.S.C. § 1123(b)(2): Assumption or Rejection of Executory Contracts**

55. The Debtors have exercised their sound business judgment in determining that all executory contracts or unexpired leases of the Debtors shall be deemed rejected as of the Confirmation Date, except (i) those previously assumed pursuant to Final Order of the Bankruptcy Court; (ii) those subject to a motion or application to assume pending at the conclusion of the Confirmation Hearing; or (iii) as expressly provided in Article 16 of the Plan, and therefore the Plan satisfies the requirements of section 1123(b)(2) of the Bankruptcy Code.

(vii) **11 U.S.C. §1123(b)(3)(B): Pursuit of Causes of Action**

56. Section 13.3 of the Plan provides that, as of the Effective Date, the Trust Assets shall vest in the Trust. Included in the Trust Assets are all Third Party Claims, exclusive of those Claims expressly released in the Plan or transferred to the Purchaser. The Trust shall have full, exclusive and complete authority to investigate, and if appropriate, prosecute, settle, release or abandon Third Party Claims and to investigate, prosecute, defend, resolve and settle any litigation relating to Third Party Claims, and therefore the Plan complies with section 1123(b)(3)(B) of the Bankruptcy Code.

(viii) **11 U.S.C. § 1129(a)(1): Compliance with Title 11**

57. The classification of Claims and Equity Interests set forth in the Plan satisfies the standards of 11 U.S.C. § 1122. The Plan complies with the applicable provisions of the Bankruptcy Code, including 11 U.S.C. § 1123.

(ix) **11 U.S.C. § 1129(a)(2): Plan Proponents' Compliance with Title 11**

58. The Proponents have complied with the applicable provisions of the Bankruptcy Code, including without limitation, sections 1125 and 1126 of the Bankruptcy Code, therefore the Plan satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.

(x) 11 U.S.C. § 1129(a)(3): Plan Proposed In Good Faith

59. The Plan is proposed in good faith and not by any means forbidden by law, and therefore satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

60. The Proponents have proposed the Plan with the legitimate, valid, and honest purpose of liquidating the Debtors' property and assets and making distributions to holders of Claims against the Debtors' estates. Accordingly, the Plan fairly achieves a result consistent with the objectives and purposes of the Bankruptcy Code.

61. The Plan is the result of good faith, arms-length negotiations among the Plan Parties.

62. In determining that the Plan is proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases and the formulation of the Plan.

(xi) 11 U.S.C. § 1129(a)(4): Disclosure and Approval of Payments

63. Other than payments to Court-approved professionals, no payments have been made nor are any payments to be made by the Debtors, or by any person issuing securities or acquiring properties under the Plan, for services or for costs and expenses incurred in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases. In any event, all such payments are subject to the approval of the Bankruptcy Court as reasonable, therefore the Plan satisfies the requirements of section 1129(a)(4) of the Bankruptcy Code.

(xii) 11 U.S.C. § 1129(a)(5): Disclosure of Management and Payments to

Insiders

64. The Debtors and the Committee have disclosed (a) the identity and affiliations of each individual proposed to serve as a director or officer of the Reorganized Debtor after confirmation of the Plan and (b) the identity of each insider who shall be employed or retained by the Reorganized Debtor and the nature of any compensation for such insider. Such persons have been selected in a manner consistent with the interest of holders of Claims and Equity Interests and with public policy.

65. At the Confirmation Hearing, the Debtors identified all Debtor personnel who shall be (x) directors, (y) officers, or (z) voting trustees of the Reorganized Debtor; and the Debtors also disclosed the identity and compensation for any insider who shall be employed by the Reorganized Debtor. Therefore, the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

66. At the Confirmation Hearing, the Debtors and the Committee identified William Kaye as the initial trustee of the Trust. Mr. Kaye's appointment as Creditor Trustee of the Trust is consistent with the interests of creditors and equity security holders and with public policy.

(xiii) 11 U.S.C. § 1129(a)(6): Regulatory Rate Approval

67. The Debtors' businesses do not involve the establishment of rates over which any governmental regulatory commission has or shall have jurisdiction after confirmation of the Plan, therefore 11 U.S.C. § 1129(a)(6) is inapplicable.

(xiv) 11 U.S.C. § 1129(a)(7): Best Interest of Creditors Test

68. Based on the Ballot Tabulation and the Liquidation Analysis prepared by the Debtors, with respect to each impaired Class of Claims or Equity Interests, (a) each holder of a Claim or Equity Interest of such Class has either accepted the Plan or (b) shall receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the

Effective Date, that is not less than the amount that the holder would so receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. Therefore, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code

(xv) 11 U.S.C. § 1129(a)(8): Acceptance of Plan by All Classes

69. As disclosed in the Ballot Tabulation, all Classes, except Classes 6 and 7 either voted to accept the Plan or are deemed to have accepted the Plan under the Disclosure Statement Order, in accordance with the requirements contained in 11 U.S.C. § 1126. Therefore, with respect to each Class, other than Classes 6 and 7, the Plan satisfies the requirements of section 1129(a)(8) of the Bankruptcy Code.

70. The Plan provides for no distribution to holders of claims or interests in Classes 6 and 7, and therefore, pursuant to section 1126(g) of the Bankruptcy Code, Classes 6 and 7 are deemed to reject the Plan. The Plan does not discriminate unfairly against, and is fair and equitable with respect to, holders of claims and interests in Classes 6 and 7. Specifically, no class of claims or interests that are junior to Classes 6 and 7, respectively, shall receive or retain any property under the Plan. Therefore, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code and can be confirmed notwithstanding the deemed rejection by Classes 6 and 7.

(xvi) 11 U.S.C. § 1129(a)(9): Payment of Priority Claims

71. The Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code because, except to the extent that the holder of a particular claim has agreed to different treatment of such claim, sections 6.4, 8.1, and 8.2 of the Plan provides that Administrative Expense Claims and Priority Claims shall be treated in a manner that complies with the provisions of section 1129(a)(9) of the Bankruptcy Code.

(xvii) 11 U.S.C. § 1129(a)(10): Acceptance of Plan by Impaired Class

72. Without including any acceptance of the Plan by any Insider, all classes of Claims entitled to vote voted to accept the Plan; accordingly, Section 1129(a)(10) of the Bankruptcy Code is satisfied.

(xviii) 11 U.S.C. § 1129(a)(11): Feasibility

73. The Plan implements the efficient and orderly liquidation of the Debtors and their estates. The Debtors have estimated the total amount of Administrative Claims, Priority Unsecured Non-Tax Claims and Priority Unsecured Tax Claims that may ultimately be allowed and there is sufficient Cash in the Debtors' estates on the Effective Date to satisfy those Claims in full, as set forth in the Liquidation Analysis. Therefore, the Plan is feasible and complies with section 1129(a)(11) of the Bankruptcy Code.

(xix) 11 U.S.C. § 1129(a)(12): Payment of Fees

74. Section 10.2(c) of the Plan provides for the payment of all fees payable pursuant to 28 U.S.C. § 1930 on the Effective Date, and therefore the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

(xx) 11 U.S.C. § 1129(a)(13): Retiree Benefits

75. There are no retiree benefits to be continued by the Debtors as to any current or former employees, and therefore section 1129(a)(13) of the Bankruptcy Code is inapplicable.

(xxi) 11 U.S.C. § 1129(b): Cramdown

76. All impaired Classes of Claims, other than Classes 6 and 7 either voted to accept the Plan or are deemed to have accepted the Plan.⁶ Class 6, consisting of Subordinated Claims, Penalty Claims, and Disallowed Claims, and Class 7, consisting of the Debtors equity holders, receive nothing on account of their claims or interests under the Plan and are deemed to have

⁶ At the Confirmation Hearing, Bank One orally ~~amended the amount of its claims~~ *agreed to the reduction of Bank One's claims*, for voting purposes only, to ensure that Class 5 accepted the Plan. *such*

rejected the Plan.

77. The Plan does not discriminate unfairly and is fair and equitable to Class 6 and Class 7 as no claim on interest holder junior to a Class 6 claimant or Class 7 interest holder shall receive or retain anything under the Plan on account of such junior claim or interest.

(xxii) 11 U.S.C. § 1129(c): Other Plans

78. Other than the Plan, no Chapter 11 plan of reorganization or liquidation has been filed with respect to the Debtors' Chapter 11 Cases, therefore the Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code.

(xxiii) 11 U.S.C. § 1129(d): Tax Avoidance

79. The primary purpose of the Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act, and there has been no objection filed by any governmental unit asserting such purpose, therefore the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

G. Release, Injunction and Exculpation

80. The release, injunction and exculpation provisions set forth in the Plan as modified by the confirmation order: (a) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (b) are each an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (c) are integral elements of the settlements and compromises incorporated in the Plan; (d) confer material benefits on, and thus are in the best interests of, the Debtors, their estates, their creditors and other parties in interest; and (e) are, under the facts and circumstances of these Chapter 11 Cases, consistent with and permitted pursuant to sections 105, 524, 1123, 1129 and all other applicable provisions of the Bankruptcy Code. Reasonable, adequate, and sufficient notice of and opportunity to be heard with respect to such releases, injunction, and exculpation has been provided under the circumstances and such notice and

opportunity has complied with all provisions of the Bankruptcy Code, Bankruptcy Rules, the orders of the Bankruptcy Court and all other applicable rules and law, including without limitation, Bankruptcy Rules 2002(c)(3), 3016(c), 3017(f), and 3020.

H. Compliance with the Confirmation Standards of 11 U.S.C. § 1129

81. The Plan and the Plan Proponents have complied in all respects with the applicable requirements of the Bankruptcy Code, including sections 1126 and 1129 of the Bankruptcy Code, and the Plan, as modified, is hereby confirmable in all respects.

82. Contemporaneously with the entry of these Findings of Fact and Conclusions of Law, the Court is entering the Order Confirming Amended Joint Plan of Reorganization For the Debtors, As Amended (the "Confirmation Order"). To the extent that there is a conflict between the provision of these Findings of Fact and Conclusions of Law and the Confirmation Order, the provisions of the Confirmation Order shall govern.

SIGNED this 17th day of September, 2003.



HONORABLE HARLIN D. HALE
UNITED STATES BANKRUPTCY JUDGE